Supreme Court, U. S.
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No. 79-2009

In the Supreme Court of the United States

OCTOBER TERM, 1979

MELVIN E. LEVINSON,

Petitioner,

vs.

PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

On Petition For Writ Of Certiorari To The Appellate Court Of Illinois For The First Judicial District, Illinois

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REPLY BRIEF

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REPLY BRIEF

To the Honorable Chief Justice and the Associate Justices of the Supreme Court of the United States.

In reply to Respondent's Brief in opposition to the Petition for Certiorari, Melvin Levinson, petitioner, says:

I.

STATUTE OF LIMITATIONS

Respondent has completely ignored the following facts which appear in the Petition for Certiorari at the following pages:

At page 3 of Petition

"On March 21, 1973, the State's Attorney of Cook County, Illinois (hereinafter referred to as the People), filed a Petition for Rule to Show Cause why the Petitioner (hereinafter referred to as Defendant) and his co-respondent (hereinafter referred to as respondent) asking that the Rule issue against the defendant and respondent to adjudge them in contempt of Court. On March 7, 1973, defendant filed a Motion to Strike the Petition and on March 13, 1973, by leave of court, defendant filed an Amended Motion to Strike the Petition.

The aforesaid Motions to Strike were not heard. Instead, on June 28, 1973, the People filed an Amended Petition for Rule to Show Cause and a Rule to Show Cause was, by leave of court, issued and served upon defendant and respondent.

The Amended Rule to Show Cause charged that the defendant and respondent as administrator of the estate, and defendant his attorney did on

1. January 16, 1968;
2. June 26, 1968;
3. November 29, 1969; and
4. June 6, 1970,

file false accounts in utter disregard for the truth or falsity of the matters contained therein and thereby attempted to deceive and mislead the court."

At pages 4 and 5 of Petition

"On October 25, 1973, pursuant to court order, the People filed their Bill of Particulars stating that:

1. The accounting filed on January 16, 1968; June 26, 1968; were filed by the defendant and known to be false;
2. Defendant participated in the preparation of the account of January 6, 1970, but that the People had no knowledge of whether defendant had filed said account or caused said account to be filed, and
3. The estate's funds had been misappropriated between 4/25/66 and 8/1/69.

and that these acts constituted the contemptuous acts for which the People sought the imposition of punishment."[1]

At page 10 of Petition

"Indeed, since the prosecution stated the four specific dates in its amended petition and in its Bill of Particulars, the dast date being January 6, 1970, and if, at trial, the prosecution introduced evidence of offenses on other dates, subsequent to January 6, 1970, then the defendant's constitutional right was violated under the Sixth Amendment to the Constitution of the United States which required that the defendant 'be informed of the nature of the cause of

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[1] Section 111-6 of the Illinois Code of Criminal Procedure (Ill. Rev. Stat. ch. 38, par. 111-6) is entitled "Bill of Particulars" and provides:

> "At the trial of the cause *the State's evidence shall be confined to the particulars of the bill.*" (Emphasis added)

accusation'; and the Sixth Amendment is applicable to the States by incorporation into the Fourteenth Amendment. *Smith* v. *Illinois,* 390 U.S. 129 (1968); *Bloom* v. *Illinois,* 391 U.S. 194 (1968); *Shaw* v. *Illinois,* 394 U.S. 219 (1969).[2] The Illinois period of limitations is three years, Ill. Rev. Stat. ch. 38 Sec. 3-5. Failure to apply it denied defendant 'equal protection of the law' ".

At page 12 of the Petition

"None of the dates set forth by the Illinois Appellate Court and used for the first time in the Appellate Court, were set forth in the State's Bill of Particulars or charged in the Rule to Show Cause nor proven at the trial. While a Bill of Particulars in Illinois may not enlarge an offense or matter charged in the indictment, it and the charge limits not only the admissible proof but the proof used as a basis of a finding. *People* v. *Erris,* 342 Ill. 421, 174 N.E. 529 (1931), *People* v. *Dorsey,* 363 Ill. 403, 2 N.E. 2d 321 (1936). This is true in all criminal cases and the Illinois Appellate Court's failure to adhere to this is a violation of defendant's right to the law's equal protection as mandated by the XIVth Amendment to the United States Constitution.

Moreover, just as one cannot be convicted of a charge brought, nor upon evidence not substantiating that charge, so, we respectfully submit, the Appellate Court could not

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[2] At page 4 of Respondent's Brief, the Respondent states that the petitioner was punished for acts committed in September 1970 and in 1971, despite the fact that the prosecution's Amended Rule to Show Cause and *the Bill of Particulars* did not charge the petitioner with any offenses committed in September 1970 or in 1971. We respectfully submit that this constitutes a *confession of error* by the Respondent.

use as a basis for prolonging the Statute of Limitations upon charges not leveled against this defendant, nor introduced into evidence. *Cf. Thompson* v. *Louisville*, 362 U.S. 199 (1960); *Garner* v. *Louisiana*, 369 U.S. 157 (1961), *Cole* v. *State of Arkansas*, 333 U.S. 196 (1948), *DeJong* v. *Oregon*, 299 U.S. 353 (1931), *Gregory* v. *City of Chicago*, 394 U.S. 111 (1969), *In Re Oliver*, 333 U.S. 257 (1948).

We respectfully submit that the Illinois court has violated the defendant's rights that due process of law guaranteed by the Vth and XIVth Amendment to the United States Constitution."

II.

GRAND JURY

It is quite apparent to us that counsel for Respondent has merely read the Illinois Appellate Court opinion without reading the record of the trial court. The problem in this case is that *the facts as stated by the Appellate Court are not supported by the record of the trial court.*

The facts and the law are as stated at pages 17 to 29 of the Petition for Certiorari. To avoid repetition and to save the labors of this Court, we incorporate those pages herein by reference thereto and make same a part hereof.

CONCLUSION

For the reasons set forth in the Petition for Certiorari and in this Reply Brief, the petitioner prays that a writ of certiorari issue from this Court to review the judgment of the Appellate Court of Illinois, First District, in this case.

Respectfully submitted,

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